



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR PART 165

[Docket No. USCG-2015-0215]

RIN 1625-AA00

Safety Zones; Recurring Events in Captain of the Port

Duluth Zone

AGENCY: Coast Guard, DHS

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Coast Guard proposes to amend its safety zones regulations for annual events in the Captain of the Port Duluth Zone. This proposed rule would update the locations for two safety zones, add two safety zones, and modify the format of the regulation to list the annual events and corresponding safety zones in table form. These proposed amendments will protect spectators, participants, and vessels from the hazards associated with annual marine events and improve the clarity and readability of the regulations.

DATES: Comments and related material must be received by

the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER
DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2015-0215 using any one of the following methods:

- (1) Federal eRulemaking Portal:
<http://www.regulations.gov>
- (2) Fax: 202-493-2251
- (3) Mail and Hand Delivery: Docket Management Facility
(M-30), U.S. Department of Transportation, West
Building Ground Floor, Room W12-140, 1200 New
Jersey Avenue SE, Washington, DC 20590. Hand
Deliveries will be accepted between 9 a.m. and 5
p.m., Monday through Friday, except on Federal
holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for
Comments" portion of the SUPPLEMENTARY INFORMATION section
below for further instructions on submitting comments. To
avoid duplication, please use only one of these three
methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on
this rule, call or e-mail Chief Aaron Woof, Marine Safety
Unit Duluth, U.S. Coast Guard; telephone (218) 725-3821 or
by e-mail Aaron.M.Woof@uscg.mil. If you have questions on

viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2015-0215), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov> or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment it will be considered received by the Coast Guard when you successfully transmit the comment. If

you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility.

We recommend that you include your name and a mailing address, email address, or telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number USCG-2015-0215 in the "SEARCH" box and click "SEARCH". Click on the comment box in the row listing this NPRM.

If you submit your comment by mail or hand delivery, submit them in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing. If you submit your comment by mail and would like to verify that they have reached the Docket Management Facility, please enclose a stamped, self-addressed postcard or envelope and it will be returned to you. We will consider all comments and material received during the comment period and may change the proposed rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number USCG-

2015-0215 in the "SEARCH" box and click "SEARCH". Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Document Management Facility in Room W12-140 on the ground floor of the U.S. Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an associated, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not currently plan to hold a public meeting. You may submit a request for one by using one of the three methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

On May 31, 2013, the Coast Guard published an NPRM in the Federal Register (78 FR 32608) entitled "Recurring Events in the Captain of the Port Duluth Zone." The NPRM proposed to establish 8 permanent safety zones for annually recurring events in the Captain of the Port Duluth Zone under 33 CFR 165.943. The NPRM was open for comment for 30 days.

On August 12, 2013 the Coast Guard published the Final Rule in the Federal Register (78 FR 48802) after receiving no comments on the NPRM. Through this proposed rule, the Coast Guard seeks to update § 165.943.

C. Basis and Purpose

The legal basis for this proposed rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05-1, 160.5; Department of Homeland Security Delegation No. 0170.1.

This proposed rule would update the location for two safety zones for annual events, add two new permanent safety zones for recurring fireworks displays, and modify the format of § 165.943 to list annual events and corresponding safety zones in table form. These changes are necessary to protect spectators, participants, and vessels from the hazards associated with annual marine

events, and to improve the overall clarity and readability of the rule. These hazards related to the annual events include obstructions to the waterway that may result in marine casualties; explosive danger and flaming debris falling into the water from fireworks; and large congregations of vessels and waterborne spectators in the vicinity of the annual events.

This proposed rule will also arrange the safety zones listed in § 165.943 into a table sorted in ascending order of event date. This change in format is intended to improve clarity and readability and to reduce redundancy in the regulation.

Finally, this proposed rule clarifies that the enforcement dates and times for each safety zone listed in Table 165.943 is subject to change. While the events are anticipated to annually recur on certain dates, factors, to include inclement weather, may result in postponement. In the event of a postponement, the Coast Guard will issue a Notice of Enforcement with updated enforcement dates and times, and corresponding Broadcast Notice to Mariners for on scene notice.

D. Discussion of Rule

The amendments to this proposed rule are necessary to ensure the safety of vessels and people during annual

events taking place on or near federally maintained waterways in the Captain of the Port Duluth Zone. Although this proposed rule will be in effect year-round, the specific safety zones listed in Table 165.943 will only be enforced during a specified period of time when the event is on-going.

When a Notice of Enforcement for a particular safety zone is published, entry into, transiting through, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth, or his or her designated representative. The Captain of the Port Duluth or his or her designated representative can be contacted via VHF Channel 16. All persons and vessels granted permission to enter the safety zone must comply with all instructions given by the Captain of the Port Duluth or his or her designated representative.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning

and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones created by this rule will be small and enforced for short periods of time. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port Duluth.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in areas designated as safety zones during the dates and times the safety zones are enforced.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: these safety zones created by this rule will be small and enforced for short periods of time. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port Duluth. Before the enforcement of these safety zones, the Coast Guard will issue local Broadcast Notice to Mariners so that vessel owners and operators may plan accordingly.

If you believe that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic

impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so they can better evaluate its effects on them and participate in this rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Aaron Woof, Marine Safety Unit Duluth, U.S. Coast Guard; telephone (218) 725-3821 or by e-mail Aaron.M.Woof@uscg.mil.

The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive

Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. This proposed rule involves the establishment of a safety zone and is therefore categorically excluded under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS
AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.943 to read as follows:

§ 165.943 Safety Zones; Recurring Events in Captain of the Port Duluth Zone.

(a) Regulations. The following regulations apply to the safety zones listed in Table 165.943 of this section:

(1) The Coast Guard will provide advance notice of the enforcement date and time of the safety zone being enforced in Table 165.943, by issuing a Notice of Enforcement, as well as, a Broadcast Notice to Mariners.

(2) During the enforcement period, the general regulations found in § 165.23 shall apply.

(b) Contacting the Captain of the Port. While a safety zone listed in this section is enforced, the Captain of the Port Duluth or his or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must

comply with all directions given to them by the Captain of the Port Duluth, or his or her on-scene representative.

(c) Exemption. Public vessels, defined as any vessel owned or operated by the United States or by State or local governments, operating in an official capacity are exempted from the requirements of this section.

TABLE 165.943
[Datum NAD 1983]

Event	Location	Event Date
(1) Bridgefest Regatta Fireworks Display	All waters of the Keweenaw Waterway in Hancock, MI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 47°07'22"N, 088°35'39"W	Mid June
(2) Ashland 4 th of July Fireworks Display	All waters of Chequamegon Bay in Ashland, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°35'50"N, 090°52'59"W	On or around July 4th
(3) City of Bayfield 4 th of July Fireworks Display	All waters of the Lake Superior North Channel in Bayfield, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°48'39"N, 090°48'35"W	On or around July 4th
(4) Cornucopia 4 th of July Fireworks Display	All waters of Siskiwit Bay in Cornucopia, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°51'35"N, 091°06'13"W	On or around July 4th
(5) Duluth 4th Fest Fireworks Display	All waters of the Duluth Harbor Basin, Northern Section in Duluth, MN within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°46'14"N,	On or around July 4th

	092°06'16"W	
(6) LaPointe 4 th of July Fireworks Display	All waters of Lake Superior in LaPointe, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°46'40"N, 090°47'22"W	On or around July 4th
(7) Two Harbors 4 th of July Fireworks Display	All waters of Agate Bay in Two Harbors, MN within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°46'40"N, 090°47'22"W	On or around July 4th
(8) Point to LaPointe Swim	All waters of the Lake Superior North Channel between Bayfield and LaPointe, WI within an imaginary line created by the following coordinates: 46°48'50"N, 090°48'44"W, moving southeast to 46°46'44"N, 090°47'33"W, then moving northeast to 46°46'52"N, 090°47'17"W, then moving northwest to 46°49'03"N, 090°48'25"W, and finally returning to the starting position.	Early August
(9) Lake Superior Dragon Boat Festival Fireworks Display	All waters of Superior Bay in Superior, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°43'23"N, 092°03'45"W	Late August
(10) Superior Man Triathlon	All waters of the Duluth Harbor Basin, Northern Section in Duluth, MN within an imaginary line created by the following coordinates: 46°46'36"N, 092°06'06"W, moving southeast to 46°46'32"N, 092°06'01" W, then moving northeast to 46°46'45"N, 092°05'45"W, then moving northwest to 46°46'49"N, 092°05'49"W, and finally	Late August

	returning to the starting position.	
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Dated: May 4, 2015

A. H. MOORE, JR.,

Commander, U. S. Coast Guard,

Captain of the Port Duluth

[FR Doc. 2015-13932 Filed: 6/5/2015 08:45 am; Publication

Date: 6/8/2015]